IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.400 of 1995
Date of decision:11.9.2006

The Commissioner of Income Tax, Jalandhar

...Petitioner

v.

M/s United Pulp and paper Mills Limited Village Asron the.Balachaur, District Hoshiarpur.

...Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Dr. N.L.Sharda, Advocate, for the petitioner.

JUDGMENT:

Following question of law has been referred for opinion of this court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar, arising out of its order dated 26.4.1995, in respect of assessment year 1985-86:-

> "Whether on the facts and in the circumstances of the case, the Ld. ITAT is right in law in holding that the expenditure on account of commission and discount amounting to Rs.18,46,254/- is not to be taken into account for the purpose of disallowance under section 37 (3A) of the Income Tax Act, 1961?"

Facts as noticed by the Tribunal are that the assessee is a limited company engaged in manufacture of paper from waste paper. The assessment was framed under section 143(3) of the Income Tax Act, 1961 (for short, 'the Act') at a loss of Rs.95,60,626/-. While completing the

assessment, the claim of the assessee amounting to Rs.18,46,254/- on account of commission and discount was disallowed by the Assessing Officer under section 37(3A) of the Act. The CIT (Appeals) upheld the action of the Assessing Officer. However, the Tribunal deleted the same following its own decision in ITA No.730(ASR)/1987 in the case of **CIT v. M/s Pioneer Sports Private Limited** and ITA No.636(ASR)/1989 in the case of **CIT v. M/s Bombay Motor Trading Co., Kapurthala** and the decision of the Income Tax Appellate Tribunal, Chandigarh Bench in the case of **ITO v. Meera & Co**. 15 ITD 227.

We have heard learned counsel for the revenue.

We find that the question referred has since been covered by decision of this court in **Commissioner of Income-tax v. Indo Asian Switchgears (P) Ltd.** (2002) 257 ITR 645, wherein it was observed:-

> "Admittedly, the provisions of section 37(3A) of the Act place an embargo on the expenses incurred on the advertisement, publicity and sales promotion. This would mean that the expenses claimed by an assessee in connection with the advertisement, etc., have to be scrutinised and reduced in accordance with the slab prescribed in section 37(3A) of the Act. However, a discount allowed by an assessee to an agent is not an expense in connection with the publicity or advertisement, etc. It is an amount forgone by the assessee in favour of the dealer for effecting the actual sale. It is not like the fashion show conducted by a garment manufacturer, but a commission allowed to a dealer. Trade discount cannot be treated as a wasteful expenditure incurred by an assessee in connection with the sales' promotion. It is not a gift as given on a festival or a free sample as distributed by a pharmaceutical company to the doctors but an actual commission allowed or paid to a dealer. It does not fall within the mischief of section 37(3A) of the Act."

Following the above judgment, we answer the question against the revenue and in favour of the assessee.

(Adarsh Kumar Goel)
Judge

Sept.11, 2006
'gs'

(Ajay Kumar Mittal)
Judge